



CRR(F)-1118-2024

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-1118-2024

Date of decision:19.11.2024

Yashik Dhamija

....Petitioner

V/s

Gavisha Setia

....Respondent

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Viren Jain, Advocate for the petitioner.

Mr. Rajesh Punj, Advocate with
Mr. Sarvesh Rattan, Mr. Sahan Punj and
Ms. Kulwinder Kaur, Advocates for the respondent.

SUMEET GOEL, J.

1. Present revision petition has been preferred against the order dated 14.02.2024 passed by the Additional Principal Judge, Family Court, Ludhiana (hereinafter to be referred as the 'concerned Family Court') praying for setting-aside of the said order. Vide the impugned order; the respondent-wife (herein) has been awarded interim maintenance at the rate of Rs.10,000/- per month to be paid by the petitioner-husband (herein) from the date of the application. The respondent (herein) had filed a petition, under Section 125 of Cr.P.C., 1973 before the Family Court, stating that she is the wife of the petitioner (herein) and is unable to maintain herself and hence the interim maintenance ought to be awarded to her.

2. Learned counsel appearing for the petitioner has iterated that the Family Court, while assessing the quantum of interim maintenance, has ignored from consideration the fact that the respondent-wife is highly educated, holding both an MBA and a B.Ed degree, and is financially independent. It has been submitted that the respondent is earning over



Rs.30,000/- per month by imparting private tuitions. According to learned counsel, the respondent-wife has withhold the factum of having received Rs.7,00,000/- as part of a settlement arrived at between the parties and hence granting the maintenance under these circumstances constitutes unjust enrichment and is legally improper. Learned counsel has further submitted that the Family Court has made an unsupported assertion that the petitioner has under-reported his income in his 2022-23 income tax return (ITR), without providing any justification for this claim. No reasoning was given to substantiate this statement, rendering it baseless. Learned counsel asserts that the findings of the learned Family Court are based on a misrepresentation of facts and the same should be set-aside. It is respectfully submitted that the respondent's deliberate attempt to conceal her true financial status constitutes a gross abuse of the process of the Court. It has been further argued, that the respondent has refused to live with the petitioner without any justifiable cause which further demonstrates that the respondent-wife has no justifiable grounds for seeking maintenance. Learned counsel has further argued that the Family Court ought to have considered the aforesaid aspect before fastening the petitioner with the liability to pay the interim maintenance to the respondent. Thus, it has been prayed that the impugned order is patently illegal and suffers from material infirmities and hence liable to be set-aside.

3. *Per contra*, learned counsel for the respondent has argued that the learned Family Court has rightly allowed the application seeking interim maintenance as the respondent-wife has no source of income to maintain herself. Furthermore, the Family Court has determined the quantum of maintenance based on the calculation of the income of the petitioner as also



taken due consideration of the relevant facts and circumstances of the case. Thus, it has been prayed that the present petition be dismissed.

4. I have heard learned counsel for the rival parties and have perused the available record.

5. It would be apposite to refer herein to a judgment passed by the Hon’ble Supreme Court titled as **Rajnesh vs. Neha & Anr.: 2021(2) SCC 324**; relevant whereof reads as under:-

“II Payment of interim Maintenance

1. *The proviso to Section 24 of the HMA (inserted vide Act 49 of 2001 w.e.f. 24.09.2001), and the third proviso to Section 125 Cr.P.C., 1973 (inserted vide Act 50 of 2001 w.e.f. 24.09.2001) provide that the proceedings for interim maintenance, shall as far as possible, be disposed of within 60 days’ from the date of service of notice on the contesting spouse. Despite the statutory provisions granting a time-bound period for disposal of proceedings for interim maintenance, we find that application remain pending for several years in most of the cases. The delays are caused by various factors, such as tremendous docket pressure on the Family Courts, repetitive adjournments sought by parties, enormous time taken for completion of pleadings at the interim stage itself, etc. Pendency of applications for maintenance at the interim stage for several years defeats the very object of the legislation.*
2. *At present, the issue of interim maintenance is decided on the basis of pleadings, where some amount of guess-work or rough estimation takes place, so as to make a prima facie assessment of the amount to be awarded. It s often seen that both parties submit scanty material, do not disclose the correct details, and suppress vital information, which makes it difficult for the Family Courts to make an objective assessment for grant of interim maintenance. While there is a tendency on the part of the wife to exaggerate her needs, there is a corresponding tendency by the husband to conceal his actual income.*

74. *It has therefore, become necessary to lay down a procedure to streamline, the proceedings, since a dependant wife, who has no other source of income, has to take recourse to borrowings from her parents/relatives during the interregnum to sustain herself and the minor children, till she begins receiving interim maintenance.*

xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx



(j) *The concerned Family Court /District Court/Magistrate’s Court must make an endeavour to decide the I.A. for Interim Maintenance by a reasoned order, within a period of four to six months at the latest, after the Affidavits of Disclosure have been filed before the court.*

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx

132. *The Affidavit of Disclosure of Assets and Liabilities annexed at Enclosures I, II and III of this judgment, as may be applicable, shall be filed by the parties in all maintenance proceedings, including pending proceedings before the concerned Family Court/District Court/Magistrate’s Court, as the case may be, throughout the country;*

xxx xxx xxx xxx xxx
xxx xxx xxx xxx xxx”

6. Vide the impugned order passed by the Family Court, the aspect of interim maintenance has been decided. It goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage. The order granting interim maintenance is, indubitably, subject to final adjudication and it is a provisional step subject to final determination to be made on the conclusion of proceedings. In other words, the interim maintenance is only tentative & is subject to fixation of final maintenance.

7. Indubitably, the relationship between the parties is not in dispute. The facts of the instant case reflect that vide the impugned order; the respondent, who is the wife of the petitioner, has been granted interim maintenance at the rate of Rs.10,000/- per month from the date of the application. While going through the impugned order, it transpires that both the parties have submitted their affidavits in terms of the judgment passed by Hon’ble Supreme Court in the case of **Rajnesh** case (supra). The Family

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Court observed that the respondent-wife, despite being professionally qualified, had failed to disclose her bank statements and income tax returns and thus an adverse inference was drawn against her. Furthermore, the respondent-wife had filed her maintenance petition on 08.03.2022 and subsequently submitted her affidavit of income on 22.08.2023. However, in her affidavit, she had not disclosed the settlement dated 05.11.2022, nor the receipt and encashment of amount Rs.7,00,000/- in December, 2022 as part of the settlement. The Family Court, thus, observed that the aforesaid omission suggests that the respondent-wife had deliberately tried to conceal the material facts in order to obtain a favourable order by misleading the Court. On the contrary, the petitioner-husband (herein) had also not approached the Court with complete transparency as he had not provided copies of his income tax returns (ITRs) for the last three years nor submitted his bank statements. Considering the facts and circumstances of the case, the Family Court held that though the respondent-wife may be professionally qualified but that does not entirely negate her entitlement for maintenance especially given the concealment of pertinent financial details by both the parties. The Family Court further observed that the petitioner-husband (herein) had failed to disclose his complete income details which appear to be an attempt to downplay his earnings, thereby potentially diluting his maintenance obligation. Based on the evidence on record, the Family Court held that the income of the petitioner-husband (herein) is far more than the amount disclosed in his 2022-23 income tax return (ITR). Considering the aforesaid factor, the Family Court had directed the petitioner-husband (herein) to pay Rs.10,000/- per month as interim maintenance to the respondent-wife (herein) effective from the date of filing of the application.



8. It is apt to mention herein that the husband has both a moral and legal obligation to provide financial support to his wife, regardless of her professional qualifications, unless there are substantial legal grounds to deny her maintenance. The educational qualifications of a wife cannot be a valid ground to deny her maintenance under Section 125 of the Code of Criminal Procedure, 1973. The essential criterion for awarding maintenance is not the academic qualifications of the wife but her actual ability to sustain herself and meet her reasonable expenses. Even if a wife is educationally qualified, it does not necessarily imply that she is financially independent or capable of earning her livelihood. Factors such as availability of employment opportunities, societal conditions, care giving responsibilities, or health issues may impede her ability to secure gainful employment. A profitable reference in this regard may be made to the judgment of this Court in case titled as ***Divesh Sapra vs. Latika Sapra and another : Neutral Citation No.2024: PHHC134617***, relevant whereof reads as under:-

“10. The next argument advanced on behalf of the husband to contend that the wife being professionally qualified cannot be expected to sit idle and as such she is not entitled to seek maintenance is again liable to be rejected as being misconceived. The wife merely by virtue of being educationally qualified cannot be held disentitled to seek maintenance, until and unless it is proved that she being professionally qualified, having taken up a profession, has given up on such profession, just for the sake of seeking maintenance. In the present case, it is not the case of the husband that the wife was working and earning after the marriage prior to her filing the present petition for grant of maintenance.”

Therefore, the bald assertions made by the husband regarding the educational qualifications of the respondent-wife, without adducing substantive evidence to establish that she is gainfully employed, hold no legal significance. The burden of proof lies upon the husband to demonstrate



that the wife has independent income or employment, particularly when she has explicitly averred in her affidavit that she is neither employed nor earning any income.

8.1. In marital disputes, the full disclosure of the income and the bank details by both the parties is a pertinent factor to ensure fair and just decision. In proceedings arising out of maintenance petitions, the Courts plays heavy reliance on the facts and material so provided by the rival parties and hence utmost transparency and credibility of information is expected from them. Proper and accurate disclosure of relevant facts by the rival parties promotes equity and ensures just outcome of the judicial process, however, any attempt to obscure, misrepresent or concealment of financial standing or other relevant facts gravely undermine the judicial goal of reaching to the truth and doing justice between the parties. While it is an inherent duty of the Court to uncover the truth and render justice between the parties, it is equally incumbent upon litigants to approach the Court with utmost candor and transparency. The doctrine of "*he who seeks equity must do equity*", rooted in equitable jurisprudence, applies with unmitigated force to all Courts and judicial forums. This maxim underscores the foundational principle that parties seeking relief must demonstrate fairness and good faith in their conduct. Litigants are indispensable participants in the administration of justice, akin to wheels of the chariot of justice. Their conduct significantly impacts the Court's ability to deliver equitable and efficient resolutions. This obligation assumes particular importance in maintenance proceedings under Section 125 of the Code of Criminal Procedure, 1973 where financial disclosures and factual veracity are pivotal to ensuring a just outcome for the parties involved. If a party deliberately



suppresses facts, indulges in misrepresentation, or approaches the Court with mala fides intention, the Court is compelled to draw adverse inferences against such conduct. Maintenance proceedings, being remedial and benevolent in nature, demand utmost transparency to uphold the spirit of justice. Any attempt to frustrate these proceedings through concealment or deceit undermines the sanctity of judicial processes and must be met with appropriate judicial disapproval to preserve the integrity of justice delivery. In the instant case, it is pertinent to mention herein that the wife had tried to conceal the payment of Rs.7,00,000/- so paid to her by the petitioner-husband on account of settlement arrived at between the parties. Although, failure of disclosure of such details should not wholly diminish the right of the wife for maintenance, for her entitlement is based on her destituteness and vagrancy as also the husband's ability to provide it. However, the justice requires that the same shall be taken into account and adjusted towards the arrears of interim maintenance so granted by the Family Court.

9. Another pertinent aspect of the matter merits consideration at this juncture. While going through the impugned order, it has transpired that the respondent-wife (herein) has specifically prayed for grant of Rs.22,000/- as litigation expenses before the Family Court. However, the Family Court did not allocate any amount towards the same. Given the particular facts and circumstances of the case coupled with the fact that the petitioner-husband (herein) has failed to provide any convincing evidence to show that the respondent-wife (herein) has any steady source of income or any adequate means of financial support for her survival, this Court finds it appropriate to grant one time litigation expenses to the tune of Rs.10,000/- to the respondent-wife. Ordered accordingly.



10. In view of the above, the instant petition is disposed of in the following terms:

- (i) The quantum of interim maintenance so determined by the Family Court does not call for any interference;
- (ii) That the amount of Rs.7,00,000/- so received by the respondent-wife as per compromise dated 05.11.2022 shall be adjusted towards the payment of the maintenance to be paid by the petitioner-husband;
- (iii) The petitioner-husband is directed to pay one time litigation expenses to the respondent-wife to the tune of Rs.10,000/-.

11. Any observations made and/or submissions noted hereinabove shall not have any effect on the merits of the case and the Family Court shall proceed further, in accordance with law, without being influenced therefrom.

12. Pending application(s), if any, shall also stand disposed of.

(SUMEET GOEL)
JUDGE

November 19, 2024
Ajay

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No